Supreme Court of the United States

OCTOBER TERM, 1908.

No. 636

WILLIAM A. WRIGHT, COMPTROLLER GENERAL,
PETITIONER,

v.

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY AND THE ATLANTIC COAST LINE RAILROAD COMPANY.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BOYKIN WRIGHT AND
JOHN G. HART,
Attorney General of Georgia,
Counsel for the Petitioner.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 1908

Supreme Court of the United States

OCTOBER TERM, 1902.

EX PARTE WILLIAM A. WRIGHT, COMPTROLLER GENERAL, PETITIONER.

Petition for Writ of Certiorari Requiring the Circuit Court of Appeals for the Fifth Circuit to Certify to the Supreme Court, for Its Review and Determination, the Case of William A. Wright, Comptroller General, Appellant, vs. The Louisville and Nashville Railroad Company and The Atlantic Coast Line Railroad Company, Appellees, Being No. 1156 in that Court.

To the Honorable the Supreme Court of the United States:

The petition of William A. Wright respectfully shows to this honorable court as follows:

1. Your petitioner is a citizen of and is the comptroller general of the State of Georgia, and resides in the city of Atlanta, in said State.

2. The Louisville and Nashville Railroad Company is a corporation created and existing under the laws of the State of Kentucky and is a citizen of that State, with its principal

office in the city of Louisville, in said State, and the Atlantic Coast Line Railroad Company is a corporation created and existing under the laws of the State of Virginia and is a citizen of that State, with its principal office in the city of Petersburg, in said State; that the Georgia Railroad and Banking Company is a corporation created and existing under the laws of the State of Georgia, with its principal office in the city of Augusta, in said State.

3. That heretofore, to wit, on the 22d day of August, 1901, the said Louisville and Nashville Railroad Company and the said Atlantic Coast Line Railroad Company filed their bill in equity against William A. Wright, comptroller general, to enjoin the latter from collecting from the Georgia Railroad and Banking Company State taxes on certain shares of stock in the Western Railway of Alabama, complainants being at the time of the bringing of said suit the lessees of the said Georgia railroad and liable under the terms of the lease for taxes assessed against the lessor. The lease was for ninety-nine years from the first day of April, 1881. Among the properties leased by the Georgia Railroad and Banking Company was its interest in the Western Railway of Alabama, which at the time of the lease was jointly owned by the Georgia Railroad and Banking Company and the Central Railroad and Banking Company as tenants in common, each of said companies owning one-half undivided interest therein. (For copy of said lease, see certified Record, page 22, marked "A.")

4. Subsequent to the lease the owners of the Western Railway of Alabama, viz., the Georgia Railroad and Banking

Company and the Central Railroad and Banking Company. had the same incorporated under the laws of Alabama, as provided for in the lease, with a capitalization of $3,000,000, divided into 30,000 shares of stock, fifteen thousand to the Georgia Railroad and Banking Company and 15,000 to the Central Railroad and Banking Company. These 15,000 shares of stock have been held ever since, and are still held by the Georgia Railroad and Banking Company in the State of Georgia, the income of which, however, is paid over annually to the lessees. The Georgia Railroad and Banking Company executed to the lessees a power of attorney to vote said stock at the stockholders' meeting.

These 15,000 shares of stock are the property which the comptroller general claims is subject to taxation. The object of the bill was to enjoin the collection of this tax on the ground that there is no law authorizing the taxation of shares of stock held by a resident owner in a foreign corporation. Complainants as lessees of the Georgia Railroad and Banking Company, entitled to the income from said shares of stock, and liable under the lease contract for the taxes, if any, due thereon, brought their bill in the United States circuit court for the northern district of Georgia to enjoin the collection of said taxes.

5. There being no controversy as to the facts, there were presented to the court but two questions:

(1.) Did the complainants have such interest in the matter complained of as to entitle them to maintain said bill, and such equity as to entitle them to relief by injunction?

(2.) Are the said shares of stock in the Western Railway of Alabama, an Alabama corporation, held by the Georgia

Railroad and Banking Company, a Georgia corporation, taxable as property of the latter company by the State of Georgia?

6. Judge Newman, presiding in the circuit court, decided both of these questions in favor of the railroads, and granted an injunction against the comptroller general, enjoining him from issuing any execution or taking any steps to collect the taxes upon the shares of stock in the Western Railway of Alabama held by the Georgia Railroad and Banking Company in the State of Georgia.

7. Judge Newman in his opinion stated the issue as follows:

"It may be conceded, first, as a general proposition, that the State has the power to treat shares in a corporation as distinct and separate property in the hands of the holders, should it desire to do so, for purpose of taxation; and further, if suitable legislation is enacted, it may carry out this purpose. This is supported by abundant authority, and is not questioned, as I understand, by counsel for the complainants in this case.

"Cook on Stock and Stockholders, sec. 563.

"Tennessee *vs.* Whitworth, 117 U. S., 129

"Conceding this to be true, however, the real contention of counsel for complainants here is, that the State of Georgia has not adopted this policy, and that the action of the comptroller general in attempting to tax these shares is without authority of law."

8. The State excepted to this decision and appealed the same to the circuit court of appeals, and the case on appeal

was heard in New Orleans on the — day of May, 1902, the specification of errors on said appeal being as follows:

First. That the court erred in not sustaining defendant's demurrer to the bill set up by way of answer and dismissing the said bill, because:

(*a.*) The complainants did not make such a case as entitled them in a court of equity to any relief from or against the defendants touching the matters contained in said bill or any of such matters.

(*b.*) Because there was no equity in said bill.

(*c.*) Because complainants had no such interest in the matters complained of as to entitle them to maintain said bill and to entitle them to relief by injunction.

Second. Because the court erred in granting the injunction against William A. Wright, comptroller general, perpetually enjoining him from issuing any execution or taking any steps to collect taxes upon the shares of stock in the Western Railway of Alabama held by the Georgia Railroad and Banking Company in the State of Georgia.

Third. Because the court erred in granting the injunction against the Georgia Railroad and Banking Company, enjoining it from making any return of the shares of stock of the Western Railway of Alabama held by it in the State of Georgia for the purposes of taxation, or from paying any taxes thereon, or doing any act or thing recognizing the liability of said shares of stock to be taxed in the State of Georgia.

Fourth. Because the court erred in holding and decreeing, under the facts and circumstances of the case, that "under the laws of the State of Georgia and the decisions of its courts, shares of railroad stock are mere representations of the railroad property itself, and that stock held by a railroad company in railroads without the limits of this State is not taxable in the State of Georgia," and in not holding and decreeing to the contrary.

Fifth. Because the court erred, under the facts and circumstances of the case, in holding and decreeing "that the said William A. Wright, comptroller general, is without any authority of law to undertake to collect taxes upon said shares of stock, and is not authorized as comptroller general so to do," and in not holding and decreeing to the contrary.

9. On the 13th day of October, 1902, the circuit court of appeals handed down its decision affirming Judge Newman's opinion, filing no opinion.

10. The contention of the State of Georgia is that since the constitution of 1877 all property not exempt by that constitution is taxed, and that the legislature not only has not exempted but cannot exempt any item of property not specifically mentioned as exempt in that constitution, and that inasmuch as shares of stock are property in the holder thereof, separate and distinct from the property of the corporation itself, these shares are taxable to the owner at its domicile, no matter where the property of the corporation may be located.

11. A large sum to the State is involved in this litigation, amounting to $150,000. or other large sum, besides the taxes that will continue to accrue to the State on said shares in the future, provided taxes on said shares are legally collectible by the State.

12. Your petitioner shows that the State is dissatisfied with the said judgment of the circuit court of appeals.

13. Your petitioner is advised and believes that said judgment of the United States circuit court of appeals for the fifth circuit in said case is erroneous, and that this honorable court should require the said case to be certified to it for review and determination, under and in conformity with the provision of the sixth section of the act of Congress entitled "An act to establish circuit courts of appeals, to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes," approved March 3, 1891, petitioner presenting this his petition for certiorari within one year from the rendition of the judgment of the said circuit court of appeals and at the first term of this court thereafter, accompanying the same with a certified copy of the entire record of the said case in the circuit court of appeals, as required by rule No. 37 of this honorable court, said record being filed herewith as part of this application for certiorari and marked Exhibit "A," the said case being made final in the said circuit court of appeals by said act.

14. That the questions involved in said suit are of gravity and importance, in this:

(1.) That the said suit and decision involved the question of interference by the United States court by injunction with

the State in the collection of its revenue and deprived the State in this particular case of the sum of $150,000 or other large sum.

(2.) That said decision is in conflict with the decisions of the supreme court of Georgia interpreting that provision of the constitution of 1877, declaring what property shall be taxed and what property shall be exempt from taxation, the conflict being in this:

(*a.*) That the said decision of the circuit court of appeals for the fifth circuit holds that shares of stock in a foreign railroad are not property subject to taxation here, but mere representations or symbols of property, the only substantial property being that of the railroad company itself in the State where said railroad is located.

(*b.*) That the said decision of the circuit court of appeals in affirming the decision of the circuit court holds that the General Assembly of Georgia has the power to declare whether or not shares of stock in a foreign railroad or in any railroad shall be deemed and treated as property subject to taxation, whereas the supreme court of Georgia has distinctly held in several decisions to the contrary and declared that the legislature, since the constitution of 1877, has no power to classify subjects of taxation, but that the said constitution alone does this and forbids the legislature from undertaking to classify subjects of taxation or to exempt any property not specifically exempted by that constitution, as shown by the following authorities, to wit:

The constitution of Georgia prescribes an *ad valorem* tax on *all* property subject to taxation.

Section 5883, Georgia Code.

All property in the State divided in two classes only—that subject and that not subject to taxation.

82 Ga., 138.

84 Ga., 683.

Shares of stock in railroad companies not included in the exemptions authorized by the constitution.

Georgia Code, 5884, 5886.

Shares of stock in Georgia are personal property.

Georgia Code, sec. 3070.

"Shares of stock in railroad companies shall be *deemed personal property.*"

Sec. 2165 of the Code.

40 Ga., 408.

94 Ga., 201, 202.

109 Ga., 69–72.

Shares of stock separate property from property of corporation.

94 Ga., 201, 202.

58 Ga., 190.

95 U. S., 679.

96 U. S., 193.

109 Ga., 69–72.

The legislature has no power to classify subjects of taxation.

82/138=84/683=87/400=107/55=104/300=109/80.

113 Ga., 883, at 885.

This our constitution forbids when applied to property. The constitution alone does this.

109 Ga., 70.

The decision in 109 Ga., at 72, distinctly declares that shares do not represent the property of the corporation, and that tax on the shares is a direct tax on property, viz., the property of the shareholder and not the property of the corporation.

109 Ga., at 72 and top of page 73.

To the same effect:

109 Ga., page 80 *et seq.*

Any property which claims exemption must show express authority for said exemption.

Sturgis *vs.* Carter, 114 U. S., 511.

104 Ga., at 297.

113 Ga., 883, at 885.

74 Ga., 413.

"Taxation is the rule, and exemption the exception (74 Ga., 413). * * * Any one claiming an exemption from taxation must show an act of the General Assembly passed in pursuance of the constitution, authorizing the exemption; and in construing such an act every doubt is to be resolved in favor of taxation and against exemption."

113 Ga., at 885.

Railroad companies are required to return each "class or species of property"—all property—to be "taxed as other property of the people of this State."

Code, sec. 780.

Likewise ordinary tax-payers are required to return specifically all property, including obligations for money, etc., whether the same are within or without the State.

Code, sec. 833.

The question then resolves itself into a simple one, viz: Are railroad shares "property?" If so, and not exempt, the laws of Georgia tax them.

Code, secs. 780–833.

But the very tax act under which these taxes are claimed *expressly* requires the shares of stock in a foreign corporation to be returned for taxation by the tax-payer under oath.

Acts of 1898, page 36, sec. 16, pars. 30, 31, and 32.

Also in this very act the legislature recognizes "stocks" as *property to be taxed* in requiring "that the agent in this State, of any person, firm or corporation, resident without this State, who shall have on hand for sale, storage, or otherwise, as such agent, any merchandise or other property, including money, notes, accounts, bonds, *stocks*, etc., shall return the same for taxation to the tax receiver of the county where the same may be, to be taxed for State and county purposes as other property of the State is taxed."

Acts of 1898, page 29.

In Georgia the constitution classifies the subjects of taxation. The legislature has nothing to do with it. By the constitution all property is taxed except religious, charitable, public or educational property.

109 Ga., 68 and 70.

But if the legislative intent be considered of importance, how could that intention be made more manifest than in the said act of 1898?

Read 113 Ga., 883, at 885; 74 Ga., 413.

See also Georgia Laws of 1884 and 1885, pp. 28 and 30, as follows:

1. Section 2 of the act of 1884–'5, entitled—

"An act to provide for the correct returns of the property in this State for the purpose of taxation, and for other purposes.

"SECTION 2. *Be it further enacted*, That personal property shall be construed, for purposes of taxation, to include all goods, chattels, moneys, credits and effects, whatsoever they may be, all ships, boats and vessels belonging to the inhabitants of this State, whether at home or abroad, and all capital invested therein; all money within or without the State due the person to be taxed; all stocks and securities, whether in corporations within this State or in other States, owned by citizens of this State, unless exempt by the laws of the United States or of this State."

See Georgia Laws of 1884–'5, pages 28 and 30.

The above act of 1884–1885 is *not* a part of the general tax act of that year. It is a separate, distinct, and permanent enactment, declaratory of the general policy of the State and of the legislative intent that personal property shall be construed to include, *for purposes of taxation*, all *stock in foreign corporations* owned by citizens of this State unless exempt by the laws of the United States or of this State.

See Acts of 1884–1885, pages 28 and 30.

(3.) That the questions involved in said suit are of further gravity and importance in this, to wit:

That the said decision of the circuit court of appeals in holding that shares of stock in a corporation are not property, but mere symbols of property, is in conflict with the decisions of other circuit courts of appeals and of the Supreme Court of the United States, and for this reason this honorable court should require the said case to be certified to it for review and determination, under and in conformity with the provisions of the said sixth section of the act of Congress of March 3, 1891, the said conflict being with the decisions of this honorable court as contained in—

Sturgis *vs.* Carter, 114 U. S., 511.
3 Wall., at page 583.
136 U. S., 549 (L. ed.), 527.
70 U. S., 573, 584.
85 U. S., 206, 230.
117 U. S., 129.
119 U. S., 265.
Cleveland Trust Co. *vs.* Lander, etc., U. S. Sup. Ct., Oct. Term, 1901.

(4.) That the questions involved in said suit are of further gravity and importance in this, to wit:

That the said case was decided in the said circuit court of appeals as well as in the circuit court upon the supposed authority of the decision of the supreme court of Georgia in the case of Wright, comptroller general, *vs.* Southwestern Railroad Company, reported in 64 Ga., 783, at 799.

Judge Newman, rendering the opinion of the circuit court, conceded that the State had the power to treat shares of

stock as distinct and separate property for purposes of taxation, but he sustains the contention that the State has not adopted this policy and relies on 64 Ga., 783.

That decision is put on the theory that stock in a railroad is but so many shares of its property, simply symbols or representations of the corporate property, and is contrary to the great weight of authority defining what a share is.

Morawetz, secs. 224, 225.
69 Pa., 407.
50 Am. Rep., 131, 132.
2 Woods, 144.
1 Woods, 18.
3 Wall., 584.
18 Wall., 229, 230.
94 Ga., 202.
109 Ga., 69–72.

The said decision in 64 Ga., 783, was rendered under the constitution of 1868, when the legislature had the power to exempt from taxation any property, either by express enactment to that effect or by failing to provide the machinery for getting it on the digest.

109 Ga., 80 (h. n. 1).

But by the constitution of 1877 the power to "exempt" from taxation was taken away from the legislature, and thereafter it could not do so if it desired, either expressly or by failing to provide the necessary machinery.

109 Ga., 80 (h. n. 2).

Besides, when the decision in 64 Ga. was rendered there was no law requiring shares of stock to be returned

for taxation as is now required by the tax act of 1898 and by the Acts of 1884–'5, pages 28 and 30, above quoted.

As we have seen, the decision in 109 Ga., at 72, distinctly declares that shares do not represent the property of the corporation, and that a tax on the shares are a direct tax on the property, viz., the property of the shareholder and not the property of the corporation.

109 Ga., at 72 and top of 73.

Wherefore your petitioner respectfully prays that a writ of certiorari may be issued out of and under the seal of this court, directed to the United States circuit court of appeals for the fifth circuit, commanding the said court to certify and send to this court, on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of the said circuit court of appeals in the said case therein entitled William A. Wright, comptroller general, appellant, *vs.* Louisville and Nashville Railroad Company *et al.*, appellees, appealed from the United States circuit court for the northern district of Georgia, being No. 1156 in said circuit court of appeals, to the end that the said case may be reviewed and determined by this court as provided in section 6 of the act of Congress entitled "An act to establish circuit courts of appeals, and to define and to regulate, in certain cases, the jurisdiction of the courts of the United States, and for other purposes," approved March 3, 1891, or that your petitioner may have such other or further relief or remedy in the premises as to this court may seem appropriate and in conformity with the said act, and that the said judgment of the said circuit court of appeals in the

said case, and every part thereof, may be reversed by this honorable court.

And your petitioner will ever pray, etc.

WILLIAM A. WRIGHT,
As Comptroller General of the State of Georgia,
By his solicitors and counsel, JOHN C. HART,
Attorney General of Georgia,
BOYKIN WRIGHT.

VERIFICATION OF THE PETITION.

UNITED STATES OF AMERICA,
Northern District of Georgia, at Atlanta, Ga.

Boykin Wright, Esq., being duly sworn, says that he is one of the attorneys of counsel for William A. Wright, comptroller general, the petitioner above named, and as such had in part personal charge for him of the case in the foregoing petition mentioned in the circuit court of the United States for the northern district of Georgia, and in the United States circuit court of appeals for the fifth circuit; that he has read the said petition by him subscribed, and that the facts therein stated are true to the best of his information and belief.

BOYKIN WRIGHT.

Sworn to and subscribed before me this 2d day of February, 1903.

GEO. T. JACKSON,
Not. Pub., Richmond Co., Ga.

To the Louisville and Nashville Railroad Company and to The Atlantic Coast Line Railroad Company:

Please take notice that on Monday, the 16th day of March, 1903, at the opening of the Supreme Court of the United States on that day, or as soon thereafter as counsel can be heard, a petition will be presented to the court by William A. Wright, as comptroller general of the State of Georgia, and application made for the issuing of the writ of certiorari, to be directed to the circuit court of appeals of the United States for the fifth circuit, to bring up for the review and determination of the Supreme Court of the United States, and for such other proceedings as shall seem best to that court, a transcript of the record, including the decision of said circuit court of appeals rendered the 13th day of October, 1902, in the case of William A. Wright, comptroller general, appellant, *vs.* The Louisville and Nashville Railroad Company and The Atlantic Coast Line Railroad Company, appellees, being No. 1156 on the docket of said fifth circuit court of appeals.

BOYKIN WRIGHT,
JNO. C. HART,
Solicitors for William A. Wright, Comptroller General.

Service of the above notice is hereby acknowledged and copy received this day by the Louisville and Nashville Railroad Company.

FEBRUARY 19, 1903.

KING & SPALDING,
JOS. B. & BRYAN CUMMING,
Sol'rs for L. & N. R. R. Co.

Service of the above notice is hereby acknowledged and copy received this day by the Atlantic Coast Line Railroad Company.

FEBRUARY 19, 1903.

KING & SPALDING,
JOS. B. & BRYAN CUMMING,
Sol'rs for Atlantic Coast Line Railroad Company.

[Endorsed:] In Supreme Court United States. William A. Wright, comptroller general, petitioner, *vs.* Louisville and Nashville R. R. Co., The Atlantic Coast Line R. R. Co., respondents. Petition for writ of certiorari. (Original.) Filed in clerk's office this — day of ——, 1903. —— ——, clerk. John C. Hart, Boykin Wright, solicitors for petitioner.